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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,321	01/22/2004	Marcel Huard	12296-17US-1 IC/lll	2666

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EXAMINER

PIERCE, WILLIAM M

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,321

Applicant(s)

HUARD ET AL. ED

Examiner

William M Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3-MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

WILLIAM M. PIERCE
PRIMARY EXAMINER

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claims 28-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. One cannot determine whether a method or apparatus is being claimed. The preamble should positively recite whether the body of the claim to follow is a method or an apparatus

Claim Objections

Claims 29-34, 36, 38, 42, 43 and 48 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

How a bet is recorded fails to further limit its structure. As to claims 30-34, what something represents fails to further limit its structure. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Further note that where a claim limitation is written as a function to be performed it is not considered to recite sufficient structure to invoke an interpretation under 35 U.S.C. 112, sixth paragraph. See Watts v. XL Systems, Inc., 232 F.3d 877, 56 USPQ2d 1836 (Fed. Cir. 2000)

Claim Rejections - 35 USC § 102

For the purposes of this rejection the claims are being treated as apparatus claims.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28-36 and 39-53 are rejected under 35 U.S.C. 102(b) as being anticipated by Beltran 6,065,752.

As to claims 28-34, 47 and 48 Beltran shows betting cards 104, a bet recorder 202, a random card selector 109 and a payout calculator 208. The functional limitation with respect to what each bet does or represents fails to distinguish over the art of record. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). As to claim 35 and 36, 106 is

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considered to be a bet securing recorder. The function of the element as recited in the claim fails to distinguish over the applied art as applied above with respect to Schreiber. As to claims 49-51, chips used in the game of Beltran are considered betting markers.. As to claim 53 a players chips in his hand are considered to be a payout bank. AS to claim 52, a chip placed on the "0" bet spot is considered to be a outside identifier. As to claim 39, 42-46, the "7" spaces in the middle of the playing surface as shown in fig. 1 is considered to be an outside card. As to claim 41, the awarding of a free turn as an incentive to play a game is considered old and well known. In conclusion, this rejection is largely base on the fact that, in an apparatus claim, the claimed invention must distinguish itself from the prior art in terms of structure rather than function.

Claims 37, 38 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Porto, 6,520,503.

102 6,520,503 Porto

As to claim 37, Porto shows a betting numbers display 102, a betting numbers recorder 104, a bet securing numbers recorder 122, random number selector 106 and a payout calculator being the dealer. Claim 38 recites function that fails to distinguish over the applied art. As to claim 54 a players chips in his hand are considered to be a payout bank.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Allen, Berman, Jones and Astancha show wagering games.

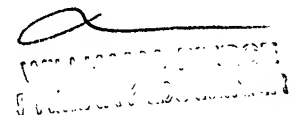
Any inquiry concerning this communication and its merits should be directed to William Pierce at E-mail address bill.pierce@USPTO.gov or at telephone number (571) 272-4414.

For **official fax** communications to be officially entered in the application the fax number is (703) 872-9306.

For **informal fax** communications the fax number is (703) 308-7769.

Any inquiry of a general nature or relating to the **status** of this application or proceeding can also be directed to the receptionist whose telephone number is (703) 308-1148.

Any inquiry concerning the **drawings** should be directed to the Drafting Division whose telephone number is (703) 305-8335.

A handwritten signature in black ink is positioned above a rectangular stamp. The stamp contains the text "RECEIVED" and "JAN 11 2011" in a bold, sans-serif font.